

**FILED**

**JUN 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALAN PARDOFIGUEROA,

Defendant - Appellant.

No. 05-50834

D.C. No. CR-04-01451-MMM-01

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Margaret M. Morrow, District Judge, Presiding

Submitted June 12, 2006<sup>\*\*</sup>

Before: FERNANDEZ, KLEINFELD and BERZON, Circuit Judges.

Alan Pardofigueroa appeals from the district court's judgment and 27-month sentence imposed following his guilty-plea conviction to Conspiracy, in violation of 18 U.S.C. § 371, Fraud and Misuse of Documents, in violation of 18 U.S.C.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1546(a), and False Statements, in violation of 18 U.S.C. § 1001. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Pardofigueroa contends that the district court erred by applying a preponderance of the evidence standard, rather than the beyond a reasonable doubt standard, when determining whether the factual predicate for a sentencing enhancement had been met. This contention is foreclosed by *United States v. Kilby*, No. 05-30112, 2006 WL 891044, \*4 (9th Cir. April 7, 2006) (holding that under the advisory guidelines, a district court should resolve factual disputes at sentencing by applying the preponderance of the evidence standard).

Pardofigueroa also contends that the district court plainly erred by imposing a condition of supervised release that required him to report to his probation officer within 72 hours of re-entering the United States because such a condition violates his Fifth Amendment right against self-incrimination. This contention is foreclosed by *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006) (holding that a condition of supervised release that requires a defendant to report to his probation officer upon re-entry to the United States does not violate the defendant's Fifth Amendment right against self-incrimination).

**AFFIRMED.**